

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

**SIERRA CLUB, WEST VIRGINIA
HIGHLANDS CONSERVANCY, OHIO
VALLEY ENVIRONMENTAL COALITION,
and COAL RIVER MOUNTAIN WATCH,**

Plaintiffs,

v.

Civil Action No. 2:10-cv-00673

**ELK RUN COAL COMPANY, INC.;
INDEPENDENCE COAL COMPANY, INC.;
MARFORK COAL COMPANY, INC.;
PEERLESS EAGLE COAL COMPANY;
and POWER MOUNTAIN COAL COMPANY,**

Defendants.

**STATUS REPORT AND JOINT MOTION TO CONTINUE SUSPENSION OF
SCHEDULING ORDER AND TO EXTEND DEADLINE FOR SUBMITTAL OF
PROPOSED CONSENT DECREE**

Plaintiffs, by counsel, and Defendants, by counsel, jointly submit this report on the status of settlement negotiations and jointly submit this motion requesting a continuance of the suspension of the existing Scheduling Order and an extension of the March 11, 2011 deadline for either the submittal of the Parties' proposed consent decree or the submittal of a revised schedule to the Court. Plaintiffs, by counsel, and Defendants, by counsel, jointly request that the Court set an April 11, 2011 deadline for either the submittal of the Parties' proposed consent decree or the submittal of a revised schedule to the Court. In support of this joint motion, the parties state as follows:

1. Due to the press of other matters, the parties have not completed settlement negotiations.

2. However, the parties have made progress on negotiations. Since the Court's February 2011 Order both parties have actively pursued settlement negotiations to the extent possible. The parties have exchanged a draft settlement agreement and plan to proceed with negotiations as quickly as possible. The parties appear to be in agreement on the major issues, and the only remaining details to resolve are collateral issues.

3. Counsel for the Parties still believe that settlement of this action will be accomplished. Accordingly, they seek a continuance of the suspension of discovery in this matter in order to allow them to pursue such a resolution. They previously obtained an Order suspending the scheduling order and setting the deadline for submittal of a proposed consent decree until March 11, 2011. *See* Doc. No. 58. The parties are confident that they will achieve settlement, but settlement negotiations have been unexpectedly delayed due to other matters.

4. The Parties desire to promptly negotiate and present a proposed consent decree or announce a resolution to the Court on or before April 11, 2011.

5. In the event that a settlement cannot be satisfactorily and timely memorialized in the form of a proposed consent decree, the Parties will so report to the Court on or before April 11, 2011 and will seek a new trial date and the entry of a scheduling order.

Wherefore, for the reasons set forth above, the parties jointly request that the Court enter an order extending the suspension of the current Scheduling Order and setting April 11, 2011, as the deadline for submittal by the parties a proposed consent decree or report on the status of settlement negotiations.

Respectfully submitted,

/s/ Derek O. Teaney for Christopher Hunter
Robert G. McLusky
Christopher Hunter
Douglas Crouse
Jackson Kelly PLLC

/s/ Derek O. Teaney
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CERTIFICATE OF SERVICE

I, Derek O. Teaney, do hereby certify that on March 11, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert G. McLusky
Jackson Kelly PLLC
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Suite 1600
PO Box 553
Charleston, WV 25322

/s/Derek O. Teaney